

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

CITY OF CARSON,

Employer,

and

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
LOCAL 809, AFL-CIO,

Petitioner.

Case No. LA-BR-2-M

Request for Stay

PERB Order No. Ad-323-M

May 8, 2003

Appearances: Richards, Watson, & Gershon by Amy Greyson, Attorney, for the City of Carson; Rothner, Segall & Greenstone by Bernhard Rohrbacher, Attorney, for American Federation of State, County and Municipal Employees, Local 809, AFL-CIO.

Before Baker, Whitehead and Neima, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on a request for a stay by the City of Carson (City) of a Board agent's administrative determination pending the Board's determination of the City's appeal.

BACKGROUND

American Federation of State, County and Municipal Employees, Local 809, AFL-CIO (AFSCME) filed a petition for Board review under PERB Regulation 60000¹ alleging that the City failed to follow its Employer-Employee Relations Resolution No. 85-107 (EERR) promulgated pursuant to the Meyers-Milias-Brown Act (MMBA)² in granting a unit

¹PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

²MMBA is codified at Government Code section 3500 et seq.

modification petition. Under the unit modification petition, The Professional Association (Association) proposed to transfer the Public Information Specialist classification from AFSCME's middle-management unit to the Association's professional employees' unit. AFSCME alleges that the petition was: (1) untimely; (2) did not follow the format required by the EERR; and (3) did not contain appropriate factual justification for the proposed modification. In the administrative determination, the Board agent found that: (1) the Board has jurisdiction over this dispute; (2) the applicable "open period" for petitioning for a unit modification under Article II, Section 10 of the EERR is that of the incumbent employee organization, and not of the petitioning organization; and (3) the unit petition was not filed within the "open period" under EERR Article II, Section 8 because it was filed during the term of the memorandum of understanding (MOU) between the City and AFSCME, the incumbent employee organization. The Board agent thus concluded that the City acted inappropriately when it ruled that the unit modification petition was timely filed and ordered the Public Information Specialist to be returned to AFSCME's middle-management unit.

The City wishes to stay the Board agent's order to return the Public Information Specialist position to AFSCME's unit. The City council approved the transfer on February 19, 2002. On February 20, 2002, the City moved the position into the Association bargaining unit. Since that time, the employee holding that position has enjoyed enhanced salary and enumerated benefits pursuant to the MOU between the Association and the City, as compared to the salary and benefits that employee would receive under the AFSCME MOU. The City argues that the Board should issue the stay for reasons consistent with its decisions in Gilroy Unified School District (1991) PERB Order No. Ad-224 and Inglewood Unified School District (1990) PERB Order No. Ad-205. Under those decisions, according to the City, the

Board held that a stay will be granted where the conduct in question would be unnecessary if the Board overturned the decision of the Board agent. In this case, the City argues, if the Board overturned the Board agent's administrative determination, a transfer would be rendered unnecessary and moot, as well as disruptive to the existing salary and benefits of the employee. Although AFSCME filed a response to the City's appeal of the administrative determination, it did not respond to the City's request for stay.

PERB Regulation 32370 allows the Board discretion to issue a stay and provides that:

An appeal will not automatically prevent the Board from proceeding in a case. Parties seeking a stay of any activity may file a request for a stay with the administrative appeal which shall include all pertinent facts and justification for the request. The Board may stay the matter, except as is otherwise provided in these regulations.

This case presents a unique set of facts in support of the City's request for stay. Board precedent has provided little guidance in defining the appropriate circumstances for the Board to grant a stay; however, the general theme has been to determine whether the Board's action or order would be rendered unnecessary should the Board reverse the Board agent's ruling.

(See e.g., Fremont Union High School District (1993) PERB Order No. Ad-237; Gilroy Unified School District (1991) PERB Order No. Ad-224; Inglewood Unified School District (1990) PERB Order No. Ad-205; Pittsburg Unified School District (1978) PERB Order No. Ad-34.) In this case, should the Board reverse the Board agent's ruling, implementation of the Board agent's order would become unnecessary. Furthermore, granting a stay will impact only one employee and will prevent the incumbent from suffering a loss of salary and benefits while the Board considers the City's appeal. It is interesting to note that, here, the employer is advocating for the employee's retention of a higher salary and improved benefits during the

pendency of the appeal, and that AFSCME has not objected. The Board therefore finds it appropriate to grant the City's request for stay.³

ORDER

The request by the City of Carson for a stay of the administrative determination in Case No. LA-BR-2-M is hereby GRANTED.

Members Neima and Baker joined in this Decision.

³This decision does not decide the merits of the City's appeal.